



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: 11/18/2020

Taxpayer ID Number:

Form:

Tax Period(s) Ending:

Person to Contact:

Identification Number:

Telephone Number:

Fax Number:

UIL CODE: 501.03-00

Number: 202110024

Release Date: 3/12/2021

CERTIFIED MAIL – Return Receipt Requested
LAST DAY FOR FILING A PETITION WITH THE TAX COURT:

Dear :

This is a final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3), effective October 16, 20XX. Your determination letter dated November 2, 20XX is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

Organizations described in IRC Section 501(c)(3) and exempt from tax under Section 501(a) must be both organized and operated exclusively for exempt purposes. You are not organized and operated exclusively for one or more purposes described in Treasury Regulations Section 1.501(c)(3)-1(a)(1).

You are not organized exclusively for one or more of IRC Section 501(c)(3) purposes because you do not have an acceptable exempt purpose and a qualified dissolution clause in your organizing documents.

Additionally, you are not operated exclusively for any exempt purposes under IRC Section 501(c)(3) because you are operated for a substantial nonexempt purpose to benefit yourself and to serve only private interest rather than public interest.

As such, you failed to meet the requirements of IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(a), in that you have not established that you were organized and operated exclusively for exempt purposes.

Contributions to your organization are no longer deductible under IRC Section 170.

Organizations that are not exempt under IRC Section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

U. S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

You may be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Date:
04/03/2020
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Address:

CERTIFIED MAIL – Return Receipt Requested

Manager's contact information:

Name:
ID number:
Telephone:
Response due date:

Dear _____ :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final adverse determination letter.

Contacting the Taxpayer Advocate Office is a taxpayer right

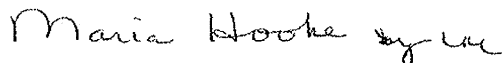
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,



Maria Hooke

Director, Exempt Organizations Examinations

Enclosures:

Form 6018
Form 4621-A
Form 886-A
Pub 892
Pub 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 20XX; 20XX

ISSUE:

Whether () continues to qualify for exemption as an organization described in the Internal Revenue Code (IRC) §501(c)(3).

FACTS:

was incorporated under the laws of the State of as a non-profit corporation on January 1, 20XX.

According to Articles of Incorporation, its purpose is the "operation of homeowner's association for subdivision". Additionally, upon its dissolution, "its assets shall be liquidated, and its debts paid in full; and after it has fully complied with the applicable provisions of the of the Not-For-Profit Corporation Code relating to dissolution, any remaining balance shall be distributed to the members".

was recognized to be exempt from federal income tax as an organization described in IRC §501(c)(3), classified as a private foundation, Effective October 16, 20XX.

On its application for exemption, Form 1023EZ, the identified itself as a homeowner's association with educational exempt purpose. It also requested to be classified as a private foundation.

On its tax returns for 20XX and 20XX, listed its mission or significant activities as "marketing and managing homes in a residential subdivision".

According to the Treasurer, is a small , gated homeowner's association consisting of zero vacation homes and some empty lots. This is a private community where only members, their families and friends have access to. There is no public access. Its activities include collecting member dues and paying for expenses related to the homeowner's association. The President, Vice President, and Treasurer/Secretary are paying members of who also have property in the community.

An examination of books and records did not reveal any activity dedicated to one or more purposes under IRC 501(c)(3). According to the Treasurer and an examination of books and records, activities consist of collecting member dues, paying expenses associated with operating and maintaining the common areas such as landscaping, lawncare, wastewater treatment, electricity, and community gate repairs.

conducts annual meeting with members, generally to address issues such

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as member dues, expenses related to the operation and maintenance/repairs of the community.

For both tax years 20XX and 20XX, filed Form 990 instead of Form 990-PF consistent with its foundation classification.

fiscal year ends in December 31.

Years under examination are 20XX and 20XX.

financial as reported on Form 990:

CHART DELETED

LAW:

IRC § 501(c)(3) exempts from federal income tax organizations which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Reg. § 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Treas. Reg. § 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its

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purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(b)(4) states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. For example, upon dissolution, the assets would, by reason of a provision in the organization's articles be distributed for one or more exempt purposes, or to the federal government, or distributed by a court to another organization to be used in a manner as in the judgment of the court will best accomplish the general purposes of the dissolved organization. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treas. Reg. § 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). It is not so operated if more than an insubstantial part of its activities does not further those purposes.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) states that an organization may be exempt as an organization described in 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 58-617, 1958-2 CB 260, (Jan. 01, 1958) Rulings and determinations letters granting exemption from federal income tax to an organization described in section 501(a) of the Internal Revenue Code of 1954, to which contributions are deductible by donors in computing their taxable income in the manner and to the extent provided by section 170 of the Code, are effective only so long as there are no material changes in the character of the organization, the purposes for which it was organized, or its methods of operation. Failure to comply with this requirement may result in serious consequences to the organization for the reason that the ruling or determination letter holding the organization exempt may be revoked retroactively to the date of the

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changes affecting its exempt status, depending upon the circumstances involved, and subject to the limitations on retroactivity of revocation found in section 503 of the Code.

Rev. Rul. 69-175, 1969-1 C.B. 149 describes an organization that was formed by parents of students attending a private school. The sole purpose of the organization was to provide bus transportation to and from school for the members' children. Parents paid an initial family fee and an additional annual charge for each child. The revenue ruling states: "When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves private rather than a public interest. Accordingly, it is not exempt from Federal income tax under Section 501(c)(3) of the Code."

In *Better Business Bureau of Washington, DC., Inc. v. U.S.*, 326 U.S. 279 (1945), an organization which engaged in some educational activities, but also had substantial nonexempt activities including investigating and exposing unethical business practices to further the business interests of merchants. The Supreme Court ruled that an organization is not operated exclusively for exempt purposes if it has a single nonexempt purpose that is substantial in nature.

In *Benedict Ginsberg and Adele W. Ginsberg v. Commissioner*, 46 TC 47 (1966), the organization was formed to provide a haven or refuge in time of danger from storms or the elements for small craft in distress, to dredge the waterways or channels for the purposes stated above and for the further purposes of improving the health, recreational and other considerations of such waterways or channels. In addition, the organization would maintain such waterways or channels.

The court found the general public had no direct access to the water, and the owners of waterfront property were assessed dredging cost based on frontage. This demonstrated that the dredging was undertaken by owners primarily to benefit themselves and not the general public and the organization did not qualify as exempt under IRC Section 501(c)(3).

TAXPAYER'S POSITION:

During the exit interview, the Treasurer agreed to agent's proposed revocation of exemption under IRC 501(c)(3).

GOVERNMENT'S POSITION:

is not organized and operated exclusively for one or more purposes described in Treas. Reg. § 1.501(c)(3)-1(a)(1) for the following reasons:

First, is not organized exclusively for one or more purposes under IRC 501(c)(3).

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In its Articles of Incorporation, _____ has a clause that does not limit its purpose to one or more exempt purposes described in Treas. Reg. § 1.501(c)(3)-1(b)(1)(i). IRC 501(c)(3) purposes include religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals. _____ purpose of operating a home owner's association is not one such recognized exempt purpose.

In addition to having a nonexempt purpose, _____ also has a disqualified dissolution clause because of a provision to distribute the remainder of its assets to members. According to Treas. Reg. § 1.501(c)(3)-1(b)(4), such an organization is deemed to have failed the organizational requirement. Since _____ does not have an acceptable exempt purpose and a qualified dissolution clause in its organizing documents, thus, it is not organized exclusively for one or more of IRC 501(c)(3) purposes.

Second, _____ is not operated exclusively for one or more purposes under IRC 501(c)(3). In each of the years under examination, _____ conducted substantial nonexempt activities. In fact, none of its activities were related to any exempt purpose. Paying for landscaping, lawncare, electricity and gate repairs for example, are not representative of IRC 501(c)(3) activities, especially where the entire community is off limit to the public. Since _____ has only nonexempt activities, thus proving that it's operated for a substantial nonexempt purpose. Having a substantial nonexempt purpose is enough to preclude exemption as seen in the case *Better Business Bureau of Washington, DC., Inc. v. U.S.* Given the fact that _____ is a private, gated community that does not allow public access, plus an examination of its books and records did not uncover evidence indicating that substantially all of its activities were carried out for the benefit of the public, it is reasonable to deduce that all its activities were undertaken only to benefit itself. This case is similar to the case *Benedict Ginsberg and Adele W. Ginsberg v. Commissioner*, which the organization was held to be nonexempt under IRC 501(c)(3).

Furthermore, by forming an association of homeowners of a private, gated community and paying for services related to the operation and maintenance of the common areas, effectively, _____ provides cooperative services only for itself. In this case, _____ is similar to the organization described in Rev. Rul. 69-175 which was found to be serving a private interest, thus not exempt under IRC 501(c)(3). Having only nonexempt activities proves that _____ is operated for a substantial nonexempt purpose which benefits itself and serves only private interest. As a result, _____ is not operated exclusively for one or more purposes under IRC 501(c)(3).

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CONCLUSION:

is not organized and operated exclusively for one or more purposes described in Treas. Reg. § 1.501(c)(3)-1(a)(1). is not organized exclusively for one or more of IRC 501(c)(3) purposes because it does not have an acceptable exempt purpose and a qualified dissolution clause in its organizing documents. Additionally, is not operated exclusively for any exempt purposes under IRC 501(c)(3) because it is operated for a substantial nonexempt purpose to benefit itself and to serve only private interest rather than public interest. Consequently, exemption under IRC 501(c)(3) should be revoked as of October 16, 20XX according to Revenue Ruling 58-617. As such, must file Form 1120, *U.S. Corporation Income Tax Return* instead of Form 990-PF, *Return of Private Foundation* beginning with tax year 20XX going forward.